IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9767 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANUBHAI G PARMAR

Versus

BM DEVID

Appearance:

MR PH PATHAK for Petitioner

MR MUKESH R SHAH for Respondent No. 1 & 2

M/S TRIVEDI & GUPTA for Respondent No. 3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 09/02/2000

ORAL JUDGEMENT

1. Heard learned counsel for the respective parties. Rule. On a joint request of learned counsel for respective parties, rule is taken up for hearing today.

2. I have heard learned counsel for the petitioner,

Mr.M.R.Shah, learned counsel for respondents No.1 & 2 and learned counsel for respondent No.3.

3. The short controversy in the present petition is as regards the refusal on part of the authority to make a reference u/s 10[1] of the I.D. Act, as per the impugned order at Annexure `A' to the petition.

4. As a result of the hearing and discussion, a consensus was arrived at between the respective counsel, with which I entirely agree, that the impugned order refusing to make a reference is an order on merits, and in fact and substance amounts to deciding the dispute which is sought to be referred to the Tribunal, on the facts of the case. The designated authority has, in the impugned order, refused to make a reference on the ground that, "the workman could not produce documentary evidence to show that he was appointed by the management of O.N.G.C." Obviously, this would amount to reaching a finding of fact that there was no relationship between the parties of an employer and an employee. It is not necessary to discuss the extensive case law on the subject to the effect that the designated authority u/s 10[1] of the Act cannot enter into the factual dispute of the matter and refuse to make a reference by examining the dispute on merits, or by recording findings of fact on the dispute.

5. The impugned order is therefore clearly beyond the jurisdiction of the designated authority, and is therefore required to be quashed and set aside.

6. It is accordingly so directed.

7. It is further directed that the concerned respondents shall refer the matter in dispute for adjudication to the appropriate Forum under the Industrial Disputes Act, 1947.

8. Rule is accordingly made absolute with no orders as to costs. Direct service is permitted.

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